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TO RUEHC/SECSTATE WASHDC IMMEDIATE 0017
INFO RWANDA COLLECTIVE
SOUTHERN AF DEVELOPMENT COMMUNITY COLLECTIVE
RHEFDIA/DIA WASHINGTON DC
RHMFISS/HQ USAFRICOM STUTTGART GE
RUCPDOC/DEPT OF COMMERCE WASHINGTON DC
RUEAIIA/CIA WASHINGTON DC
RUEATRS/DEPT OF TREASURY WASHINGTON DC

UNCLAS SECTION 01 OF 02 KINSHASA 000022

SENSITIVE
SIPDIS

PASS TO DEPT OF COMMERCE WASHDC (MARIA RIVERO AND KEVIN BOYD)
PASS TO DEPARTMENT OF TREASURY WASHINGTON DC/OFAC
DEPT FOR EEB/FO (JOAN WADELTON)
DEPT FOR EEB/OFD/OIA (BRAD STILWELL)

E.O. 12958: N/A

TAGS: [ECON](#) [EFIN](#) [EINV](#) [KJUS](#) [KTFN](#) [CG](#)
SUBJECT: MIMINCO INVESTMENT DISPUTE STILL SIMMERS

¶1. (SBU) Summary: MIMINCO local representative Joseph Kabwika reported to Econoff on January 6 that no progress has been made on either GDRC payment of a USD 13 million ICSID settlement to MIMINCO or the expropriation of MIMINCO from its headquarters building in Kinshasa. He requested immediate Embassy assistance in the matter. End summary.

Background

¶2. (SBU) The Mineral Mining Company (MIMINCO) is a mining company owned by U.S. citizens but registered only in the DRC (ref A). In February 1999, GDRC officials and soldiers seized MIMINCO's diamond mine located in Diboko, in the Tshikapa Territory in Western Kasai province, confiscating all diamonds, communications equipment and administrative documents at the mine, and jailed the local manager. Separately, MIMINCO reported that the DRC Office of Illegally Acquired Properties (OMBA) attempted to seize MIMINCO's headquarters located on 144 June 30 Street, Parcel No. 2047 in Kinshasa, claiming that the company had illegally purchased the property from an uncle of former President Mobutu. The seizure of the headquarters was reversed in May 2008 after the U.S. Embassy intervened, but MIMINCO was evicted again in July 2008 by the same court that had reversed the seizure. After unsuccessfully resolving the diamond mine seizure dispute with the GDRC, MIMINCO filed a claim with the World Bank's International Center for the Settlement of Investment Disputes (ICSID) in Washington per Article VII-4 of the U.S.-Congo Bilateral Investment Treaty. The ICSID in Paris found in favor of MIMINCO in April 2005. In March 2005, MIMINCO reported that two private companies forcibly took over its concession and that DRC military personnel were guarding the property. In November 2005, MIMINCO and several GDRC Ministers jointly executed an agreement to reduce the award to USD 13 million, but no progress toward payment has occurred. In July 2007, the Litho family (related to Mobutu) used the backing of a court order to forcibly occupy MIMINCO's offices in Kinshasa. Although the court ordered the property to be returned to MIMINCO, the interlopers refused to vacate the office. The Embassy sent diplomatic notes to the Ministry of Foreign Affairs to inform them of the situation and to request action in August 2007, January 2008, and April 2008, but received no official response. MIMINCO was able to move back into their office in May 2008, but the office was subsequently expropriated again in July 2008. MIMINCO informed the Embassy in April 2009 that a DRC court had decided in MIMINCO's favor on the return of the confiscated property.

Still no room in the inn

¶3. (SBU) On January 6, MIMINCO supervisor Joseph Kabwiika Mwanza provided updates on their investment dispute case to Econoff. Kabwiika stated that the last time MIMINCO employees were physically present in their HQ building was December 31, 2007. The building is allegedly occupied illegally by a Mr. Didier Kinuani, who is involved in the diamond business, and who is supported by an Indian merchant, M. Rizwana Dahhani. Around four people are currently occupying the building. Kabwiika showed Econoff a copy of a ruling from a Kinshasa court, the Tribunal de la Paix de Kinshasa/Gombe dated April 8, 2009 (in French- Document No. RP.18695/19914/19978/VI), which ruled in MIMINCO's favor and recognized MIMINCO as the sole owner of the building. However, MIMINCO has not been able to move back into their building. On October 5, 2009, the President of MIMENCO, Dr. Ilunga Jean Mukendi, sent a memo to the Procureur General of the GDRC for Kinshasa/Gombe, urging him to enforce the court's ruling (also in French). Unfortunately, MIMINCO has not received a reply back from the Procureur General. Kabwiika has requested that the Ambassador and/or Embassy pressure the GDRC to enforce the court's ruling and

KINSHASA 00000022 002 OF 002

ensure the MIMINCO can settle back into its HQ building, hopefully in the month of January 2010.

Payment still not received

¶5. (SBU) Kabwiika said that the GDRC tried making a first payment in the amount of USD 1.3 million on November 24, 2009. (Note: He gave Econoff a copy of the bank transfer receipt. End note.) He noted that the Central Bank (BCC) asked Raw Bank to transfer the money to the United States. Raw Bank subsequently transferred the money first to a Lebanese bank, Habib Bank, who in turn tried transferring the money to Bank of America. According to Kabwiika, Bank of America refused to accept the cash transfer because "it was a large amount of money coming from an Arab Bank and that they were not permitted to accept such transactions." The USD 1.3 million is currently deposited in an account at Raw Bank. Hence, MIMINCO has not, yet, received the payment. Kabwiika added that a repayment schedule is contingent on successful transfer of the first payment. He stated that the GDRC would only invite MIMINCO to renegotiate a payment schedule once the first transfer has been successfully completed. Kabwiika has requested that the US Embassy convince Bank of America that it is alright to accept this large payment from an "Arab bank" and that there would be no legal complications.

¶6. (U) Copies of documents concerning the case are available upon request to the Embassy.

¶7. (SBU) Comment: The MIMINCO business dispute with the GDRC has been going on for 11 years, with no clear resolution in sight. Details of the case have been cited in the DRC's 2009 Report on Investment Disputes and Expropriations (ref A). Post has even demarshaled the GDRC several times, but to no avail. Post notes that Bank of America does not have offices in Kinshasa. End comment.

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